

SAN LUIS OBISPO CUPA
Deficiency Progress Report (Submitted 4-24-08)
For 2005 Cal/EPA evaluation
(With State Response)

The following deficiencies have been previously corrected: 1, 5, 6, 7, 8, and 9
Deficiencies corrected with the update: 2
Remaining deficiencies that are being rolled into 2008 evaluation: 3, and 4

- 2. Deficiency:** The CUPA is not ensuring that all businesses annually submit their hazardous materials inventory or a certification statement on or before March 1 to the CUPA. The CUPA is only inspecting approximately 1/2 of the businesses required to comply with the business plan program. Therefore, the CUPA is ensuring only approximately 1/2 of the businesses inventories are annually updated or current.

April 9, 2007 CUPA Progress: A data base search shows that we did not complete an annual inspection for all hazardous materials handlers within the business plan program for 2006.

A new inspector was hired in February 2007. Jeff Poel has been on leave since 2-5-2007. This vacancy has put an additional strain on the Agency. One inspector has just left on a 6-week medical leave. We are now operating with 2 inspectors within our Program until Jeff returns. We originally proposed to use our annual inspection to satisfy the annual inventory certification requirement.

I now propose to amend our original approved procedure. We will endeavor to meet the annual inspection commitment but will supplement this with a signed certification statement received from the facilities not inspected. By the end of September of each year we will evaluate which facilities have not been inspected. We will then mail a request to the facilities to provide the inventory certification paperwork to this Agency. This will enable us to certify inventory for each facility by the end of 2007 for calendar year 2008. We will then repeat this procedure each year.

April 9, 2007 Cal/EPA and OES response: The revised procedure should sufficiently correct this deficiency. Cal/EPA and OES will continue to monitor your progress of implementing this new procedure via the deficiency progress reports.

August 2007 Cal/EPA and OES response: In the next deficiency progress report, due November 20, 2007, Cal/EPA and OES is requesting that the CUPA provide them with the number of facilities that were sent notices to

submit the inventory certification paperwork as described in the CUPA's revised procedure. Additionally, Cal/EPA and OES would like to know how many of those facilities responded to the request.

December 2007 CUPA Update: Problem: We were not able to generate an accurate list of facilities who had certified business plans. I could not identify which facilities had completed one of the following to certify the business plan: An inspection that certified the plan with no items pending; A update and certification of the plan or a submittal of a new complete plan. Since we have over 1,000 facilities this is a challenging task.

Solution:

- a. I implemented a procedure to have the Data Entry Technicians populate a new "Plan Certified Date" field in Envision. This now enables me to track what facilities do not have a certified plan. Whenever Technicians receive a certified plan from an Inspector, the certification date is entered.
- b. We mailed a business plan certification statement request out to all businesses with the annual invoices in November. It appears response has been good.
- c. I have required my Database Specialist to provide an updated report on 2-11-2008.

Cal/EPA and OES response to December 2007 Update: The solution may address this deficiency provided the "Plan Certified Date" field in Envision is for tracking a facility's submittal of their hazardous material inventory or certification that there is not change in their inventory. Regulated facilities are required to submit their inventory information annually and once every three years review their entire business plan. Some CUPAs prefer to have their regulated facilities provide the inventory information as well as entire business plan review information yearly. In the next deficiency progress report due March 17, 2008, please provide us a copy of the business plan certification statement request that is sent out annually as well as the update report information for this new field.

April 2008 CUPA Update:

Three documents are attached to demonstrate our progress on this issue. Two of the documents are the business plan certification notice and certification form sent with the annual invoice. The third document is our report that lists the plan certification date. We received a good response from the regulated community from this request. We will use this report in November to pinpoint, which businesses need to be sent a notice to provide a certification and applicable forms.

Cal/EPA and OES response to April 2008 Update: The corrective actions sufficiently address this deficiency. Cal/EPA and OES consider this deficiency corrected.

- 3. Deficiency:** The Annual Summary Reports indicate that 76 Class 1 violations were identified in FY 03/04. However, the CUPA did not initiate formal enforcement or make referrals for each of these violations.

April 9, 2007 CUPA Progress: We had 70.8% of Class 1 violations corrected of the total Class 1 violations we cited in 2006. We have made improvement in this area, but we will endeavor to improve this for hazardous waste class 1 violations.

April 9, 2007 Cal/EPA and DTSC response: Cal/EPA and DTSC appreciate the CUPA's effort to improve performance with in the hazardous waste generator program and look forward to a 100% completion rate in the near future with regard to enforcement. Cal/EPA and DTSC will continue to monitor the progress via the deficiency progress reports.

August 2007 CUPA Progress - (I have been unable to track these numbers since my return due to a problem with an Envision report. We are working on a fix.)

August 2007 Cal/EPA and DTSC response: Cal/EPA and DTSC understand that the database problem is preventing the CUPA from tracking the number of class I violations that have returned to compliance. The corrective action for addressing this deficiency requires the CUPA to initiate the appropriate formal enforcement in the future for all class I violations. Therefore, in the next deficiency progress report, due November 20, 2007, Cal/EPA and DTSC is requesting a summary of the formal enforcement initiated for all class I violations.

December 2007 CUPA Update: We cited 4 Class 1 Violations at 4 Facilities in 2007. We achieved compliance at three of the facilities and are in the process of enforcement to ensure compliance on the remaining one. One facility quickly came into compliance; no formal enforcement was initiated there. Violation and result summary: 2 facilities abandoned their waste on site; the other dumped it on site. We are in the process of enforcement on all 3, despite the fact two of these facilities have been cleaned up. We will be pursuing formal enforcement on the responsible party (RP) for the violations. The RP did not complete the cleanup action. Two of these facilities will be DA referrals and we are issuing a Notice of Violation to ensure due process the last one that requires abatement. The problem of tracking Class 1 violations in the database appears to have improved. In April 2007 I suspected our data entry was not reflective of what we actually accomplished, as the return to compliance number appeared too low. I examined the Class 1 definition with the Haz Mat Staff and found a large portion of entered Class 1 violations did not actually meet the definition. For example we enter Business Plan violations as

San Luis Obispo County CUPA Progress Report

Date 4-24-08

“Significant” and some had a Class 1 degree attached. We also had not updated our data entry on these violations. We can now generate a list of facilities who have been cited Class 1 violations. With the list we can easily locate the facility files and update the records.

Cal/EPA and DTSC response to December 2007 Update: Please keep us updated of the enforcement actions taken against the three facilities – two facilities that abandoned their waste and the one facility that dumped hazardous waste on site. Under California law, the CUPA is required to take formal enforcement against all facilities with Class 1 violations, regardless of whether or not the facility comes back into compliance. Therefore, in the next deficiency progress report due March 17, 2008, the CUPA will also explain how the CUPA plans on taking enforcement actions against the facility that quickly came back into compliance.

April 2008 CUPA Update:

I did some research on the facility “that quickly came into compliance” and found that a class 1 violation designation may have been used incorrectly. Our Inspector stated a worker at the subject business asked her if it was permissible to recycle his used oil at a neighboring shop. Our Inspector notified the business owner that this is not permissible and he must have the used oil picked up by a licensed hazardous waste transporter at his facility. Our Inspector explained the owner is new to the business and complied with her direction.

I filed the two DA referrals and the Deputy District Attorney is evaluating the cases.

We issued a NOV on the third case and met with the responsible party (RP). We discovered that the RP had filed bankruptcy and did not have access to the property, as the bank owns it now. We received confirming documentation of this. The RP received permission from the bank to access the property with a licensed transporter but was denied access by the City Police, who were called by the property’s buyer. We tried to convince the Police Officer to allow access to remove hazardous waste (one 55 gallon drum of waste paint and one 30 gallon drum of used oil stored within a building) but they would not. The bank states the new property owner will complete proper disposal. We are in the process of confirming the date the new owner will take possession of the property, in order to confirm proper disposal.

Cal/EPA and DTSC response to April 2008 Update: DTSC appreciates the CUPA's effort to improve performance with initiating enforcement and making formal actions in the hazardous waste program. The deficiency number 3 is being rolled into the 2008 CUPA evaluation scheduled for May 13 and 14, 2008.

4. **Deficiency:** The CUPA has not adequately documented that all facilities issued a notice to comply, citing minor violations, have returned to compliance within 30 days of notification.

April 9, 2007 CUPA Progress: We had 68% of minor violations corrected of the total minor violations we cited in 2006. We have made improvement in this area, but we will endeavor to improve this for minor violations.

April 9, 2007 Cal/EPA and DTSC response: Cal/EPA and DTSC appreciate the CUPA's effort to improve performance with in the hazardous waste generator program and look forward to a 100% completion rate in the near future with regard to enforcement. Cal/EPA and DTSC will continue to monitor the progress via the deficiency progress reports.

August 2007 CUPA Progress: Our Inspection and Enforcement Policy allows 30 days for correction of minor violations. The corrections are either self-certified by the operator by sending in the last page of the inspection report with a signed statement, along with any required compliance documents, or the inspector can make a reinspection. We currently lack the staff to reinspect facilities with open minor violations and rely on the facility to follow up in a timely manner. We have a plan to improve our performance in this area that I will detail in the next update.

August 2007 Cal/EPA and DTSC response: Cal/EPA and DTSC look forward to learning about the CUPA's plan to improve their performance in this area. In the next deficiency progress report, due November 20, 2007, Cal/EPA and DTSC is also requesting an update on the percentage of facilities with minor violations that have returned to compliance.

December 2007 CUPA Update: Our return to accumulative return to compliance rate for 2007 is 67.6%. We may need to refine this report in the future if you request. This percentage covers all "Minor" violations. This is everything that is not a "Class 1" violation. This could be a "Significant" violation such as leaking UST component to a "Minor" labeling violation. This is categorized in the database as "Significant" or "Minor". I do not believe it is responsible for our Agency to a 100% 30 day return compliance rate for all "Minor" violations, due to current staffing. We classify violations as "Significant" and "Minor" during the inspection. Our policy is to follow up with "Significant" violations within 30 days. Violations marked "Minor" also have a 30-day compliance period. Compliance is verified one of two ways for a truly "minor" violation. This is verified through the next routine inspection or the submittal of the self-certification document. We have been requesting businesses to provide the self-certification statements.

Cal/EPA and DTSC Response to December 2007 Update: The CUPA appears to be on track with ensuring that businesses return to compliance for minor violations. We understand the challenges CUPA's face with ensuring facilities return to compliance for minor violations. Our expectation is that the CUPA's should have a procedure in place, beyond verifying through the next routine inspection, for following up with facilities that have not returned to compliance. For example, some CUPA's contact facilities via telephone or mail that have not submitted the self-certification documentation.

During the next CUPA evaluation currently scheduled for May 13 and 14, 2008, Cal/EPA and DTSC are planning on discussing the classification tracking scheme currently utilized by the CUPA. For hazardous waste violations, violations are classified as Class I, Class II or Minor. Classifying a hazardous waste violation as "Significant" does not follow the naming of these violations as stated in Health and Safety Code, section 25110.8.5 and Cal. Code Regs., title 22, section 66260.10. It is recommended that the CUPA expand their definition of "Significant" to include Class I violations and Class II violations that become Class I due to a recalcitrant or chronic violation.

April 2008 CUPA Update:

I may not have been clear on my last description of how we classify violations. We do record hazardous waste violations, violations as Class I, Class II or Minor, but we define other violations further. We record additional information such defining our Business Plan or UST violation by assigning a result code as minor or a significant violation, then defining a applicable re-inspection time frame as defined by the action code. For example we cited 170 UST violations with a "significant" violation result code in 2007 in which we had a 84% correction rate. We cited 7 UST violations with a "minor" violation result code and a 30day re-inspection required in which we had a 86% correction rate.

Cal/EPA and DTSC response to April 2008 Update: DTSC appreciates the CUPA's effort to improve proper documenting return to compliance for the minor violations. The deficiency number 4 is being rolled into the 2008 CUPA evaluation scheduled for May 13 and 14, 2008.